IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

:: J U D G M E N T ::

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.507/2006

Rajendra Prasad Bagaria
Vs.
The Pharmacy Council of the State of Rajasthan & Anr.

Date of Judgment :: 08th August, 2006

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE AJAY RASTOGI
: :

Shri Alok Sharma, for the appellant.

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BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)

This special appeal is directed against the order of the learned Single Judge dismissing the writ petition of the appellant.

The appellant had filed the writ petition, S.B. Civil Writ Petition no.4309/2005, for quashing the decision of the Rajasthan State Pharmacy Council (hereinafter called 'the Rajasthan Council') dated 12.4.2005 cancelling the registration of the appellant as Pharmacist under the Pharmacy Act, 1948 (in short 'the Act'), and for a direction upon the Pharmacy Council not to remove his name from the Register of Pharmacists in the State.

The case of the appellant, briefly, is that after passing the secondary examination in 1986, he worked in Todi Medicals, a medical store at Sikar from October 1991 to March 1997. He wished to practise pharmacy as a profession, but he came to know that the registration had closed in the State of Rajasthan way back in September, 1978 itself on preparation of the 'first register' under Section 30 of the Act. He "migrated" to Sikkim where the first register was still under preparation and registration on the basis of experience had not been closed. He took up job in a medical store at Gangtok in August 2001. On the basis

of experience in course of the said employment the appellant applied for and was registered as a Pharmacist with the Sikkim State Pharmacy Tribunal (hereinafter referred to as ‘the Sikkim Council’) vide Registration no.0258/SKP/2001 on 5.12.2001 in terms of Section 31(d) of the Act. In the words of appellant – “the purpose of his sojourn to Sikkim having been achieved” – he returned to Kherli in Rajasthan in the beginning of January 2002. He then applied for registration with the Rajasthan State Pharmacy Council on the basis of his registration with the Sikkim Council. Reference was made to the Sikkim Council and by letter dated 14.5.2002 the Sikkim Council confirmed that the appellant had been registered with it as a Pharmacist and it had no objection to his registration as a Pharmacist on transfer in the State of Rajasthan. On 4.6.2002 he was registered by the Rajasthan Council under Section 32(2) of the Act vide Registration no.16864. On 22.7.2004 notice was issued by the Pharmacy Council to the appellant informing him that the Enquiry Committee constituted by the Government of Rajasthan had found his registration with the Sikkim Council irregular, being not in accordance with the

provisions of Section 31 (d) of the Act. The Enquiry Committee in fact found his stay in Sikkim itself doubtful. The said registration with the Sikkim Council being the basis of registration in the State of Rajasthan, the Enquiry Committee had recommended to the Rajasthan Council to remove the names of all such persons from the Register of Pharmacists. The appellant was asked to appear before the Executive Committee on 2.8.2004 to explain why his name should not be removed from the Register of Pharmacists of Rajasthan under Section 36 of the Act. The appellant chose not to appear before the Executive Committee on the date fixed or on any subsequent date. The Executive Committee decided to cancel his registration and remove his name from the Register of Pharmacists. The decision was approved by the Full Council on 16.3.2005. On 12.4.2005 he was informed about cancellation of registration and directed to surrender his certificate of registration on or before 16.6.2005 as required under Section 36(5) of the Act failing which he would be liable to be prosecuted under Section 43 of the Act.

The learned Single Judge noticed the facts of the case and the appellant's recalcitrance to participate in the hearing before the Executive Committee of the Pharmacy Council. Observing that he had been given opportunity of hearing which he did not avail of and that the appellant could not be registered with the Sikkim Council on the basis of experience in the State of Rajasthan, the learned Single Judge held that the appellant's registration had rightly been cancelled. The learned Single Judge noted that the appellant had an alternative remedy by way of appeal before the State Government under Section 36(4) of the Act but as according to the learned Judge, "the petitioner has no case on merit", he did not leave the option open, and in the premises dismissed the writ petition.

Shri Alok Sharma, learned counsel for the appellant submitted that the power to register and cancel the registration as Pharmacist vests in the State Pharmacy Council and the Government of Rajasthan had no business to make enquiry about the validity of appellant's registration. In any view, neither the

Government nor Pharmacy Council was competent to question the registration of the appellant as Pharmacist in the State of Sikkim. The appellant being a registered Pharmacist in the State of Sikkim, he was qualified and eligible for registration under Section 32(2) of the Act.

At this stage, before examining the submissions of counsel for the appellant, we may briefly notice the scheme of the Act so far as relevant for the purpose of this case. The Act, among other things deals with registration of pharmacists provisions relating to which are contained in Chapter IV. In terms of Section 1(3) of the Act, Chapter IV among other chapters takes effect in a particular State from such date as the State Government may by notification in the Official Gazette appoint in that behalf. Under Section 29, as soon as may be after Chapter IV has taken effect in any State, the State Government shall cause to be prepared “in the manner hereinafter provided” a register of pharmacists for the State. Section 30 deals with preparation of ‘first register’. Qualifications for entry in the first

register are mentioned in Section 31. Section 32 provides for subsequent registration.

Having regard to the controversy involved the provisions of Sections 30, 31 and 32 so far as relevant may be quoted as under :

> "**30**. Preparation of first register. – (1) For the purpose of preparing the first register, the State Government shall by notification in the Official Gazette constitute a Registration Tribunal consisting of three persons, and shall also appoint a Registrar who shall act as Secretary of the Registration Tribunal.
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> (2) The State Government shall, by the same or a like notification, appoint a date on or before which applications for registration, which shall be accompanied by the prescribed fee, shall be made to the Registration Tribunal.
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> (3) The Registration Tribunal shall examine every application received on or before the appointed date, and if it is satisfied that the applicant is qualified for registration under section 31, shall direct the entry of the name of the applicant on the register.
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> **31**.Qualifications for entry on first register.- A person who has attained the age of eighteen years shall be entitled on payment of the prescribed fee to have his name entered in the first register if he resides, or carries on the business or profession of pharmacy, in the State and if he –
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> (a) holds a degree or diploma of pharmacy or pharmaceutical chemistry or a chemist and druggist diploma of an Indian University or a State Government, as the case may be, or a

prescribed qualification granted by an authority outside India, or

(b) holds a degree of an Indian University other than a degree in pharmacy or pharmaceutical chemistry, and has been engaged in the compounding of drugs in a hospital or dispensary or other place in which drugs are regularly dispensed on prescriptions of medical practitioners for a total period of not less than three years, or

(c) has passed an examination recognized as adequate by the State Government for compounders or dispensers, or

(d) has been engaged in the compounding of drugs in a hospital or dispensary or other place in which drugs are regularly dispensed on prescriptions of medical practitioners for a total period of not less than five years prior to the date notified under sub-section (2) of section 30.

32. Qualifications for subsequent registration.- (1) After the date appointed under sub-section (2) of section 30 and before the Education Regulations have, by or under section 11, taken effect in the State a person who has attained the age of eighteen years shall on payment of the prescribed fee be entitled to have his name entered in the register if he resides or carries on the business or profession of pharmacy in the State if he –

(a) satisfies the conditions prescribed with the prior approval of the Central Council, or where no conditions have been prescribed, the conditions entitling a person to have his name entered on the first register as set out in section 31, or

(b) is a registered pharmacist in another State, or

(c) possesses a qualification approved under section 14:

Provided that no person shall be entitled under clause (a) or clause (c) to have his name entered on the register unless he has passed a matriculation examination or an examination

prescribed as being equivalent to a matriculation examination.

(2) After the Education Regulations have or by or under section 11 taken effect in the State, a person shall on payment of the prescribed fee be entitled to have his name entered on the register if he has attained the age of eighteen years, if he resides, or carries on the business or profession of pharmacy, in the State and if he has passed an approved examination or possesses a qualification approved under section 14 or is a registered pharmacist in another State.

From a conjoint reading of the above provisions, it would appear that the Act provides for entry of names in the Register of Pharmacists i.e. registration as a pharmacist at three stages. The first stage is entry of name in – what has been described as - the ‘first register’ under Section 30. Qualifications for such entry are set out in Section 31. In view of sub-section (2) of Section 30 the State Government is required to fix a date by notification and applications for entry of names i.e. registration must be made by the appointed date. Those who fail to get their names entered in the first register can apply for entry of their names under sub-section (1) of Section 32 if they satisfy the requisite

qualification. This is the second stage of registration. Those who do not get their names entered in the register, even at this stage, in the event of Education Regulations coming into force, can do so under sub-section (2) of Section 32 if they fulfil the qualification/conditions mentioned therein. This is the third and last stage of registration.

The Education Regulations, it may be mentioned, prescribing the minimum standard of education required for qualification as pharmacist and other things specified in sub-section (2) of Section 10 are framed by the Central Council i.e. the Pharmacy Council of India subject to approval of the Central Government under Section 10(1). These Education Regulations come into effect in the State under declaration to that effect by the State Government, and where no such declaration is made, on expiry of three years from the date of constitution of the State Council.

The specific case of the respondents is that Education Regulations came into effect in the State of

Rajasthan in September 1981. Indeed it is the own case of the appellant that the appointed date for entry of names in the ‘first register’ under Section 30 had expired way back in September 1978 and his registration with the Rajasthan State Pharmacy Council as a pharmacist was ‘subsequent registration’. Inasmuch as the Education Regulations had come into effect in the State of Rajasthan in September 1981, the present case would be governed by sub-section (2) of Section 32, and there does not appear to be any dispute about it.

From the reading of sub-section (2) of Section 32, it is manifest that a person is entitled to have his name entered in the register if, among other things, (a) he resides or carries on business or profession of pharmacy in the State provided he has passed an approved examination; or (b) possesses qualification approved under Section 14; or (c) is a registered pharmacist in another State. The appellant admittedly was not carrying on the business or profession of pharmacy in the State of Rajasthan nor had he passed an approved examination under Section 12

or possessed the qualification approved under Section 14. He claimed registration on the ground that he was a registered pharmacist in Sikkim State. A valid registration “in another State” is a *sine qua non* for registration in the State. The Pharmacy Council, in our opinion, was right in its stand that unless the appellant was validly registered as a pharmacist in the State of Sikkim, he cannot get his name entered, that is, get himself registered as a pharmacist in the State of Rajasthan.

Case of the appellant, as mentioned above, is that he went to Sikkim to get himself registered as a pharmacist as the first register was in the preparation there. In other words, it is the admitted case that the appellant got his name entered in the first register in the State of Sikkim. The question is whether the appellant possessed any of the qualifications requisite for entry of name in the first register in the State of Sikkim. The qualifications are set out in Section 31 of the Act. There are four alternative qualifications which the person must possess to have his name entered in the first register. The appellant does not claim to have

any degree or diploma in pharmacy or to have passed the examination recognized by the State Government for compounders and dispensers. His case is that he had been engaged in compounding of drugs in a medical store for more than five years in the State of Rajasthan and was therefore, qualified under clause (d) to have his name entered in the 'first register' in the State of Sikkim. The plea is wholly misconceived. The appellant claims to have worked in a medical store at Sikar but there is nothing on record to suggest that he was engaged in compounding or dispensing of drugs. Even if this fact is assumed in his favour, what clause (d) contemplates is that the person must have been engaged in the work of compounding or dispensing of drugs in a hospital or dispensary or other place situate within the jurisdiction of the Pharmacy Council with which he wants to be registered. This is evident form the words "has been" . . . . "for a total period of not less than five years prior to the date notified under sub-section (2) of Section 30". On a close reading of clause (d) of Section 31, thus there does not appear to be any doubt that a person can be said to be

qualified under clause (d) only when he has been compounding or dispensing drugs prior to appointed date fixed under Section 30(2) at a place within jurisdiction of the Council with which he wants to be registered.

The own case of the appellant is that he had worked in a medical shop, Todi Medicals, at Sikar from October 1991 to March 1997 before he went to Sikkim. He claims to have worked in a medical store at Gangtok from August 2001 to December 2001. On 5.12.2001, within four months of his alleged stay at Gangtok, he got his name entered in the first register there. In his own words, “the purpose of his sojourn in Sikkim having been achieved”, he returned to Kherli towards the beginning of January 2002. By virtue of his alleged experience in compounding or dispensing of drugs for six years at Sikar, his name could be entered in the first register in the State of Rajasthan, but admittedly the appointed date for such registration had already expired. On the basis of his alleged four months’ experience in a medical store at Gangtok or the experience at Sikar in Rajasthan, his

name could not be entered in the first register in the State of Sikkim. The only basis of his registration with the Rajasthan Pharmacy Council being his registration with the Sikkim Council, in the absence of a valid registration in that State, entry of his name in the Register of Pharmacists under Section 32 (2) of the Act was not in accordance with law.

The submission that the impugned decision was taken pursuant to direction of the State Government has no substance. The State Government had simply constituted an enquiry committee to make enquiry. It appears that the Government had received complaints about irregular registration of pharmacists in the State on the basis of bogus and irregular registration in another State. All that the Government did was to collect facts. On the basis of the facts collected by the Committee, and made available to the Council, show-cause notice was issued by the Executive Committee of the Council. Unfortunately, the appellant did not respond to the notice. The Executive Committee ultimately took the decision which was approved by the Full Council.

The submission that the State Government cannot question the registration with the Pharmacy Tribunal is also without any substance. The impugned decision does not affect the appellant's registration with the Sikkim Council and it is open to the appellant to practise pharmacy in that State. Where the person seeks registration on the basis of his registration in another State, the concerned State Council is competent to make enquiry that he holds a valid registration in another State. The Rajasthan Pharmacy Council therefore, did not exceed its authority or act contrary to the provisions of the Act in cancelling the appellant's registration as Pharmacist. On his own case the appellant worked in a medical store at Gangtok, Sikkim for less than four months; his alleged experience in compounding of drugs at Sikar was not at all relevant for his registration in the State of Sikkim under Section 30 read with 31 (d) of the Act. His 'subsequent registration' under Section 32(2) on the basis of registration in another State i.e. State of Sikkim was clearly not in accordance with law and in the circumstances, no

interference in the matter was called for.

In the result, we find no error in the order of the learned Single Judge dismissing the writ petition. The appeal is accordingly dismissed but without any order as to costs.

[AJAY RASTOGI], J. **[S.N. JHA], CJ.**

Skant/-